IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1635 OF 2006

Smt.Janabai D. Bhoir & Ors. ....Petitioners

V/s.

Janardhan R. Vaze & Ors. ....Respondents

Mrs.Shakuntala A. Mudbidri for the Petitioners.

Mr.G.V. Nagavsheth for Respondent No.3.

CORAM : R.M. SAVANT, J.
DATED : 5TH JUNE, 2007.

P.C. :

1. In this Petition, the Petitioners impugn the order dated 12.1.2006 by which order the application for condonation of delay in filing the Appeal has been rejected. The Petitioners claim to be the heirs of Damodar Dama Bhoir, who was the original Plaintiff in Suit No.8 of 1991, which was filed for declaration that Respondent No.3 herein has no right, title and/or interest to claim any suit lands as well as for a further declaration that the decree passed in R.C.S. No.278 of 1988 is sham and bogus and obtained by fraud. The said suit was partly decreed on 16.7.1999. Being aggrieved by the said part decree, the said Damodar Dama Bhoir filed Civil Appeal being Civil

Appeal No.101 of 1999. During the pendency of the said Appeal, the said Damodar Dama Bhoir died on 20.11.2003.

2. It is the case of the Petitioners, that they were not aware of the pendency of the said Appeal. It is only in June, 2004, that the Petitioners became aware of the said proceedings and thereafter have applied for being brought on record by filing an application for delay condonation. In the meantime the said proceedings had also abated. The learned Judge by the impugned order has rejected the delay condonation application on the ground that no sufficient ground has been shown, as also on the ground that no separate application for setting aside the abatement has been made.

3. After hearing the matter for some time, the Petitioners' counsel sought liberty to withdraw the Petition and to file fresh application for condonation of delay and also for setting aside the abatement. If such applications are made, the same would be dealt with by the concerned Court in accordance with law. It is made clear that the point of limitation is explicitly kept open and Respondent No.3 would be free to agitate the same before the Court before whom the

applications would be made.

4. With the aforesaid observations, the Petition is disposed of.

(R.M. SAVANT, J)